

HOUSE BILL No. 1334

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation. Allows at least 50% of the owners of land in annexed territory to file a written remonstrance if the county executive of the county in which the annexing municipality is located adopts a resolution disapproving the annexation.

Effective: July 1, 2008.

Thompson

January 15, 2008, read first time and referred to Committee on Rules and Legislative Procedures.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1334

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-4-3-11, AS AMENDED BY P.L.111-2005,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 11. (a) Except as provided in section 5.1(i) of this
4 chapter and subsections (d), ~~and~~ (e), **and (f)**, whenever territory is
5 annexed by a municipality under this chapter, the annexation may be
6 appealed by filing with the circuit or superior court of a county in
7 which the annexed territory is located a written remonstrance signed
8 by:

9 (1) at least sixty-five percent (65%) of the owners of land in the
10 annexed territory; or

11 (2) the owners of more than seventy-five percent (75%) in
12 assessed valuation of the land in the annexed territory.

13 The remonstrance must be filed within ninety (90) days after the
14 publication of the annexation ordinance under section 7 of this chapter,
15 must be accompanied by a copy of that ordinance, and must state the
16 reason why the annexation should not take place.

17 (b) On receipt of the remonstrance, the court shall determine



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whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) If the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

(d) If an annexation is initiated by property owners under section 5.1 of this chapter and all property owners within the area to be annexed petition the municipality to be annexed, a remonstrance to the annexation may not be filed under this section.

(e) This subsection applies if:

(1) the territory to be annexed consists of not more than one hundred (100) parcels; and

(2) eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality.

An annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by at least seventy-five percent (75%) of the owners of land in the annexed territory as determined under subsection (b).

(f) If the county executive of the county in which the municipality is located adopts a resolution disapproving the annexation not later than ten (10) days after the publication of the annexation ordinance under section 7 of this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by at least fifty percent (50%) of the owners of land in the annexed territory as determined under subsection (b). This subsection does not exempt a municipality from obtaining the consent of a county executive before annexing territory if required under section 9.1 of this chapter.

SECTION 2. IC 36-4-3-13, AS AMENDED BY P.L.111-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) Except as provided in subsections (e) and (g), at the hearing under section 12 of this chapter, the court shall order a proposed annexation to take place if the following requirements are

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1 met:

2 (1) The requirements of either subsection (b) or (c).

3 (2) The requirements of subsection (d).

4 (b) The requirements of this subsection are met if the evidence
5 establishes the following:

6 (1) That the territory sought to be annexed is contiguous to the
7 municipality.

8 (2) One (1) of the following:

9 (A) The resident population density of the territory sought to
10 be annexed is at least three (3) persons per acre.

11 (B) Sixty percent (60%) of the territory is subdivided.

12 (C) The territory is zoned for commercial, business, or
13 industrial uses.

14 (c) The requirements of this subsection are met if the evidence
15 establishes the following:

16 (1) That the territory sought to be annexed is contiguous to the
17 municipality as required by section 1.5 of this chapter, except that
18 at least one-fourth (1/4), instead of one-eighth (1/8), of the
19 aggregate external boundaries of the territory sought to be
20 annexed must coincide with the boundaries of the municipality.

21 (2) That the territory sought to be annexed is needed and can be
22 used by the municipality for its development in the reasonably
23 near future.

24 (d) The requirements of this subsection are met if the evidence
25 establishes that the municipality has developed and adopted a written
26 fiscal plan and has established a definite policy, by resolution of the
27 legislative body as set forth in section 3.1 of this chapter. The fiscal
28 plan must show the following:

29 (1) The cost estimates of planned services to be furnished to the
30 territory to be annexed. The plan must present itemized estimated
31 costs for each municipal department or agency.

32 (2) The method or methods of financing the planned services. The
33 plan must explain how specific and detailed expenses will be
34 funded and must indicate the taxes, grants, and other funding to
35 be used.

36 (3) The plan for the organization and extension of services. The
37 plan must detail the specific services that will be provided and the
38 dates the services will begin.

39 (4) That planned services of a noncapital nature, including police
40 protection, fire protection, street and road maintenance, and other
41 noncapital services normally provided within the corporate
42 boundaries, will be provided to the annexed territory within one

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(1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria.

(e) At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2).
 (2) Order a proposed annexation not to take place if the court finds that all of the conditions set forth in clauses (A) through (D) and, if applicable, clause (E) exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

- (i) Police and fire protection.
- (ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) The annexation is not in the best interests of the owners of land in the territory proposed to be annexed as set forth in subsection (f).

(D) One (1) of the following opposes the annexation:

(i) At least sixty-five percent (65%) of the owners of land in the territory proposed to be annexed.

(ii) At least fifty percent (50%) of the owners of land in the territory proposed to be annexed, if the county executive of the county in which the municipality is located adopted a resolution disapproving the annexation under section 11(f) of this chapter.

~~(ii)~~ (iii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land

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in the territory proposed to be annexed.

(E) This clause applies only to an annexation in which eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality and the territory consists of not more than one hundred (100) parcels. At least seventy-five percent (75%) of the owners of land in the territory proposed to be annexed oppose the annexation as determined under section 11(b) of this chapter.

(f) The municipality under subsection (e)(2)(C) bears the burden of proving that the annexation is in the best interests of the owners of land in the territory proposed to be annexed. In determining this issue, the court may consider whether the municipality has extended sewer or water services to the entire territory to be annexed:

- (1) within the three (3) years preceding the date of the introduction of the annexation ordinance; or
- (2) under a contract in lieu of annexation entered into under IC 36-4-3-21.

The court may not consider the provision of water services as a result of an order by the Indiana utility regulatory commission to constitute the provision of water services to the territory to be annexed.

(g) This subsection applies only to cities located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). However, this subsection does not apply if on April 1, 1993, the entire boundary of the territory that is proposed to be annexed was contiguous to territory that was within the boundaries of one (1) or more municipalities. At the hearing under section 12 of this chapter, the court shall do the following:

- (1) Consider evidence on the conditions listed in subdivision (2).
- (2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

- (i) Police and fire protection.
- (ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) One (1) of the following opposes the annexation:

- (i) A majority of the owners of land in the territory proposed to be annexed.
- (ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be

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1 annexed.
2 Evidence of opposition may be expressed by any owner of land
3 in the territory proposed to be annexed.
4 (h) The most recent:
5 (1) federal decennial census;
6 (2) federal special census;
7 (3) special tabulation; or
8 (4) corrected population count;
9 shall be used as evidence of resident population density for purposes
10 of subsection (b)(2)(A), but this evidence may be rebutted by other
11 evidence of population density.

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